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No. 217] NEW DELHI, THURSDAY, AUGUST 20, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th August, 1953

S.R.O. 1616.—Whereas the elections of Shri Ganga Ram and Shri Dalbir Singh, as members of the Legislative Assembly of the State of Punjab, from the Fatehabad constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mani Ram, s/o Shri Ramjas Bishnoi, Village Badopal, Tehsil Fatehabad, District Hissar;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, HISSAR

ELECTION PETITION No. 96 of 1952

PRESENT:—

Shri Maharaj Kishore, Retired District and Sessions Judge—*Chairman.*

Shri Tek Chand Sethi, Retired District & Sessions Judge—*Member.*

Shri Gurbakhsh Singh Gyani, Bar-at-Law—*Member.*

Ch. Mani Ram Bishnoi—*Petitioner*

Versus.

1. Shri Ganga Ram son of Khiali Ram Jat, resident of Village Gila Khara, Tahsil Fatehabad, District Hissar, returned candidate to the remaining seat from the Fatehabad Constituency of the Punjab Legislative Assembly, Respondent No. 1.
2. Shri Dalbir Singh Gohar, son of Kanhi Ram, Harijan, resident of village Parbhuwala, Tahsil Hissar, District Hissar, returned candidate from the Fatehabad Constituency of the Punjab Legislative Assembly for the seat reserved for the members of the scheduled castes, Respondent No. 2.
3. Shri Pat Ram, son of Pola, Chamar by caste, resident of Village Adam-pur, Tahsil Hissar, District Hissar, Respondent No. 3.
4. Shri Jag Ram, son of Nath Ram, Mochi Harijan, resident of Tohana, Tahsil Hissar, District Hissar, Respondent No. 4.

5. Shri Ghhabildass, son of Udmi Ram, Chamar Harijan, resident of Village Jakhodkhera, Tehsil and District Hissar, Respondent No. 5.
6. Shri Jangir, son of Santu, Harijan, resident of Village Tohana, Tahsil and District Hissar, Respondent No. 6.
7. Shri Daya Ram, son of Dallu, Chamar Harijan, resident of Dhangar, Tahsil Fatehabad, District Hissar, Respondent No. 7.
8. Shri Nathu, son of Patram, Chamar Harijan, resident of Village Sahidanwali, (Bhattu Zail), Tahsil Fatehabad, District Hissar, Respondent No. 8.
9. Shri Pirchand, son of Shadi Ram, Ramdassi Harijan, resident of Hissar Town, Tahsil Hissar, District Hissar, Respondent No. 9.
10. Shri Hetram, son of Harlal Jat, resident of Village Bhattu Kalan, Tahsil Fatehabad, District Hissar, Respondent No. 10.
11. Shri Pat Ram, son of Khub Ram, Jat, resident of Village Gilakhera, Tahsil Fatehabad, District Hissar, Respondent No. 11.
12. Shri Ramji Lal, son of Mamchand, Jat, resident of Village Daulatpur, Tahsil Hissar (District Hissar), Respondent No. 12.
13. Shri Mani Ram, son of Harji, Jat, resident of Village Ban Mando (Bhattu Zail), Tahsil Fatehabad, District Hissar, Respondent No. 13.
14. Shri Nemat Rai, son of Chanderbhan, Hindu, resident of Fatehabad, Tahsil and District Hissar, Respondent No. 14.
15. Shri Chokha, son of Hunta, Hindu Jat, resident of Village Kharbra Kalan, Tahsil Fatehabad, District Hissar, Respondent No. 15.

PRESENT:

Shri Nunya Mal, Advocate, for Shri Mani Ram, Petitioner.

Shri Mahabir Parshad, Advocate, for Ch. Ganga Ram, Respondent No. 1.

Shri Radha Krishan, Advocate, for Shri Dalbir Singh, Respondent No. 2.

Shri Sardul Singh, Government pleader, Hissar, for the Advocate General.

JUDGMENT

Ch. Mani Ram, s/o Ram Jas, Bishnoi by caste, resident of Village Badopal, Tahsil Fatehabad, District Hissar, one of the candidates for the remaining seat in the Fatehabad Constituency of the Punjab Legislative Assembly for 1952 Elections, Elector, No. 983 (Badopal Zail), on the Electoral Roll of the Fatehabad Constituency of the Punjab Legislative Assembly, the Petitioner in this case has called in question the election of Ch. Ganga Ram, respondent No. 1, who was declared elected to the remaining seat and that of Shri Dalbir Singh (Harijan), Respondent No. 2 who was declared elected to the seat reserved for the members of the scheduled castes from the Fatehabad double-member constituency (District Hissar), *vide* the Punjab Government Gazette (Extraordinary) on the 14th February, 1952, under notification No. 2732 Election, dated 14th February, 1952, on the ground that the election for this constituency is wholly void because its result has been materially affected by the illegal and improper rejection of the petitioner's nomination paper and also that of Chokha, Respondent No. 15, by Shri G. S. Mann, Returning officer, for this constituency on the 9th day of November, 1951, the date of scrutiny.

2. The allegations of the petitioner in the said petition *vide* Para. 11 to 15 disclosed, that the returning officer had illegally and improperly rejected the nomination papers of the petitioner on the false and wrong ground that the petitioner held an office of profit under the Punjab Government.

3. That the petitioner was merely an approved candidate on the list of candidates for the post of Assistant Superintendent of Jails, Punjab, a list which is maintained by the Inspector-General of Prisons, Punjab, for facility of selection whenever a contingency by way of any vacancy for such post or office arises at all. The candidates on such list cannot by any stretch of imagination be held to hold even an office what to speak of an office of profit.

4. That the returning officer's finding is most ambiguous and confused. He had started on one ground and ended on quite a different ground. The objection taken under section 7(D), of the Representation of People Act, 1951, has been decided under the Provision of the Constitution. The law cited by the returning officer is also beyond the point and his finding is against law and facts.

5. That the petitioner did not at all hold any office of profit under the Punjab Government so as to disentitle or disqualify him to stand as a candidate for election for the Punjab Legislative Assembly, and the illegal and improper rejection of the petitioner's nomination paper by the returning officer on this false and wrong ground has materially affected the result of the election in this constituency inasmuch as the whole electorate has been deprived of the exercise of its right of vote for the petitioner and, therefore, the election is liable to be declared as wholly void.

6. That the returning officer has also erred in quite improperly and illegally rejecting the nomination paper of respondent No 15 on the technical ground of the non-entry and the name of the part of the electoral roll along with the numbers in the columns provided for the Serial Nos of the candidate, proposer and the seconder without any objection by the candidates or their agents. This was not a defect of any substantial character in the circumstances of the case as it did not prejudice the purpose for which such an entry is required to be made. The candidate, the proposer and the seconder were duly located. The returning officer should have got the entries of the parts made at the time of presentation of the nomination papers if he considered it necessary and should not have rejected the paper on the date of scrutiny without any objection for its technical defect. This illegal and improper rejection of the nomination paper of Respondent No 15 has also materially affected the result of the election by debarring the whole of the electorate of this constituency from exercising its right of vote for respondent No 15 and thus by itself renders the election in this constituency void as a whole.

7 His last prayer is that the election for the two seats in the Punjab Legislative Assembly from Fatehabad Constituency, in Hissar District, be held to be void and the declaration of the respondent No 1 and 2 as having been duly elected as members of the Punjab Legislative Assembly from the said constituency be also held to be in-effective, null and void and a fresh election be ordered in this constituency.

8 In a written statement dated 6th September 1952, Ch Ganga Ram, respondent No 1 has controverted the charges made by the petitioner against him, laying stress on the fact that the petitioner was an approved candidate on the list of candidates accepted for post of Assistant Superintendent of Jails, Punjab, and as such he holds an office of profit under the Punjab Government and was also disqualified to be nominated as a candidate under section 7(D) of Representation of People Act, 1951, and other disqualifications under the aforesaid act and Constitution of India. He further contends that the decision made by the returning officer in rejecting the nomination paper of petitioner and Shri Chokha respondent No 15 is in accordance with the law and facts and is correct and thus the rejection of nomination papers had not materially affected the result of election. He further pleaded that the petitioner was not likely to be kept as a congress candidate, on the contrary the answering respondent was to be adopted by the congress as its candidate for this constituency. The voters were not likely to cast votes in favour of the petitioner so as to elect him for the constituency. The rejection of the nomination paper of the petitioner does not make the election void.

9 Similarly the nomination paper of Chokha, respondent No. 15 was rightly rejected. The objections to the nomination paper of Chokha, were made by the petitioner himself and others, and it had been rightly rejected. The rejection of nomination paper of respondent No 15 does not materially affect the result of election. Shri Chokha, was not a likely candidate to contest as he had made public declaration before scrutiny that he would not contest the election. He was not likely to get votes.

10. Shri Dalbir Singh (Harijan) in his written statement, dated 30th September 1952, denies the allegations made by the petitioner. He pleads in para 12 that the petitioner was not only an approved candidate but had undergone training at Government expense and had been in receipt of emoluments from the Government and was under legal and moral obligation to serve the Government from which he could not have unilaterally absolved himself, and was subject to the incidents of office of profit which brought him within the ambit of law barring the nomination of such persons for election to the legislatures. He had also interest in the performance of contract for services undertaken by the Government. The rest of the contents of para 12 of the election petition are wrong, so far as they seek to suppress the full truth which would come out on examination of law, Rules, Regulations, Agreement-papers and other documents connected with the matter which must be in the office of the Inspector-General,

Prisons, Punjab, and of the Superintendent of the Jail, when the petitioner under-went training. It is, therefore, wrongly asserted by the petitioner that his nomination paper was illegally and improperly rejected by the returning officer on false and wrong ground.

11 Similarly he contends that it is wrong that the returning officer improperly and illegally rejected the nomination paper of Shri Chokha, respondent No. 15. It is also wrong that the ground on which his nomination paper was rejected was not a defect of substantial character. It is also wrong that the candidate, the proposer and seconder were duly located. It was they themselves who pointed out their names after some difficulty, and returning officer could not do so till their names had been pointed out by themselves. It is wrong that the returning officer should have got the entries of the parts (Sub-division) made at the time of presentation of the nomination papers and should not have rejected the nomination papers on these grounds. It is also wrong that the rejection of the nomination paper of respondent No. 15 was illegal or improper or that it had affected the result of the election or that itself renders the election in this constituency void, as a whole. Respondent No. 15 has not challenged the election at all, and this shows that his nomination paper was not illegal and improperly rejected, and it further shows forcefully that the result of the election has not been materially affected by the rejection of his nomination paper.

12. In any case the petitioner is wrong in demanding that the election of the candidate duly returned for the seat reserved for the members of the scheduled castes should also be declared to be void, if this is the meaning of the words "wholly void" used by him in para 14 of the complaint because the scheme of Representation of People Act would show that the seats reserved for the members of the scheduled castes are considered as something quite apart and distinct from the general seats. The petitioner and Shri Chokha, respondent No. 15, were not candidates for election to the seats reserved for the members of the scheduled castes, and even if it were held that the nomination papers of either, or both of them, had been improperly and illegally rejected, such rejection can never be held to have materially affected the election to the seat reserved for the members of the scheduled castes, and this cannot be the meaning of the words "wholly void" used under Section 100 of the said act, which would, legitimately, only refer to the election for the seat for which the candidates nomination had been improperly rejected and not affect another seat which was not to be contested by any person other than a candidate duly nominated within the members of the scheduled castes entered in the electoral roll of that constituency.

13 It may be mentioned here that respondent No. 6, 7, 8 withdrew their candidature within the time prescribed for withdrawals. The counting was completed on the 6th February, 1952, at Fatehabad, and the figures of recorded votes for each candidate are given in form 16 of Form of Return of Election which is as below.—

S. No.	Name of the Candidate	No. of valid votes given for the candidates
1	Shri Pat Ram s/o Pota ..	6386
2	„ Pat Ram s/o Khub Ram ..	3084
3	„ Jag Ram ..	3048
4	„ Dalbir Singh ..	16619
5	„ Ramji Lal ..	11069
6	„ Chhabildass ..	8885
7	„ Ganga Ram ..	14516
8	„ Mani Ram ..	7521
9	„ Neyamat Rai ..	5257
10	„ Het Ram ..	1599

14. Out of the 15 respondents only Ch. Ganga Ram respondent No. 1 and Shri Dalbir Singh respondent No. 2 chose to contest the petition. The other respondents have remained *ex-parte*.

15. On perusal of the pleadings of the parties the following issues were framed:—

1. Whether the nomination paper of the petitioner was illegally and improperly rejected by the returning officer and if so, its effect? (Onus objected to)
2. (a). Whether the nomination paper of Chokha Ram, respondent was illegally and improperly rejected by the returning officer and if so, its effect?
2. (b). Whether the nomination paper of Chokha, was rejected on an objection raised by the petitioner himself hence the petitioner is estopped from raising this plea in his petition?
2. (c). Whether Chokha, respondent had declared that he was not likely to contest the election and, therefore, rejection of his nomination paper had no effect on the result of the election?
3. Whether the petitioner is not competent to present the petition and why?
4. (a). Whether respondent, Nos. 2 to 9 had filed their nomination papers for the seat reserved for the members of the scheduled castes only and if so, its effect?
4. (b). Whether petitioner, respondents, No. 1 and 13 to 15 had filed their nomination papers for general seat only and all the candidates had not filed their nomination papers for this constituency and if so, its effect?

16. As regards issue No. 1 it is strenuously contended by the learned counsel for respondents, No. 1 and 2 that since the petitioner was not only an approved candidate but had undergone training at Government expense, he was, therefore, under legal and moral obligation to serve the Government, as such he held an office of profit which brought him within the ambit of law and under section 191 of the Constitution of India was not eligible to stand for the election. In support of this contention they rely upon paragraphs 252 to 259 of Manual for the superintendence and management of Jails in the Punjab printed in 1933. They lay much stress on paragraph 256 which reads as below:—

Paragraph 256 (1) at page 93.—All selected candidates directly appointed will be posted to a Central Jail for three months training on probation. During this period they will draw pay at the rate of Rs. 60 per mensem without free quarters and will undergo a departmental examination at the end of the period, which will be partly written, partly oral and partly practical including also drill. If the candidate fails to pass this examination, he will undergo a second period of training on the same conditions as the first regarding pay and free quarters. Failure to qualify at the end of the second period will involve his removal from the list of candidates. Having completed their training and passed the qualifying examinations, selected candidates will be posted as Assistant Superintendents in any jail and will remain on probation for further 12 months dating from their appointment as Assistant Superintendents. During this period they will be entitled to a pay of Rs. 80 per mensem with free quarters, or in lieu thereof an allowance of Rs. 30 per mensem. After 12 months' service as an Assistant Superintendent a selected candidate will be confirmed in his appointment.

(2) At any time during the entire period of training and probation the service of a selected candidate may be dispensed with, if, in the opinion of the Inspector-General, he is unlikely to prove useful to the Department, subject to confirmation by the local Government.

17. In the arguments the pun was on the words "all selected candidates directly appointed will be posted" meaning thereby that in the case of selected candidates they were directly appointed and the only thing left was their posting and since, Ch. Mani Ram, the petitioner, was selected candidate who had obtained training and had passed the qualifying examination he was, therefore, considered to be appointed and was simply waiting for the posting.

18. It appears that the learned counsel missed to observe the correction slip No. 189 to para. 256 which directs to omit the words "directly appointed" appearing in the lines first and 2nd of the paragraph. In view of this correction slip

the vehement arguments of the learned counsel for the respondent loose all their force. It was also argued that paragraph 252 to 259 are the only rules which govern the recruitment of the Assistant Superintendent of Jails and have the force of law in this matter and amendments of these rules unless incorporated in the manual cannot have the same force, as the rules mentioned above. It was a common ground that the manuals produced did not vouchsafe to be corrected with the correction slips up-to-date. Our attention was drawn by the learned counsel for the petitioner to the preface of this manual which shows that the rules have been made in exercise of the powers conferred by the Prisons Act 1894, as amended by the Prisons (Punjab Amendment Act 1926), (Punjab Act IX of 1926).—

- (a) the Governor-General in council—under section 46, clauses (4), (6) and (7) and section 59, clauses (1), (3), (4), (5) and (6);
- (b) the Local Government—under section 46, clause (9) section 59, clause (7) and, subject to the control of the Governor-General in Councils, under section 60; and
- (c) the Inspector-General under section 31, and with the sanction of the Local Government under section 56.

19 He further drew our attention to the fact that it is mentioned in the preface that the paragraphs of this manual against which the black line appears are, in substance, either quotation from the law, or, from the rules having the force of law, the authority being given on the upper line under margin of each paragraph. Now, the paragraphs *viz* 252 to 259 are without a black line and according to para 2 of the preface are executive instructions which have from time to time been issued by (a) Government of India, in the form of resolutions and etc, (b) the local Government in Gazette notifications, circulars and letters: or (c) the Inspector-General with the sanction and approval of the local Government. It would thus be seen that the position put forward by the learned counsel for the respondents is not correct and these executive instructions change from time to time and the Inspector General of Prisons is quite competent to do so. It would be further clear from the evidence of Shri Jinda Ram, Office Superintendent of Inspector General, Prisons, Punjab, R.W. I, examined by Shri Dalbir Singh, respondent No 2, who stated that rules for the appointment etc. of Assistant Superintendent of Jail are given in paras 252 to 259 of the Jail Manual Edition of 1933 and in addition to these rules, the letter, dated 9th August, 1949, was issued to the persons who were candidates for this post in 1949. He produced an attested copy of this letter which is Ex R.W. I. He further deposed that the candidates accepted for this post in 1949 were governed by the above mentioned rules in the manual and the letter that was issued to them. Terms of service are also covered by these rules. He further added that there is no agreement filed or signed by Shri Mani Ram, petitioner in connection with his appointment but there is an application which he made to the Punjab Public Service Commission on the prescribed form. This application is marked Ex. R.W. 1/2. The letter referred to above reads as below which contain terms that vary as given in the manual —

Copy of letter No 8799-G I, dated the 9th August, 1949 from the Inspector-General of Prisons, Punjab, Ambala to 15 candidates as per list attached.

“You have been accepted as a candidate for employment as Assistant Superintendent Jail by the East Punjab Government. You are accordingly required to produce a medical certificate of fitness from a Civil Surgeon, which must be submitted to this office by the 20th August, 1949, at the latest.

2 Subject to your medical fitness you will be required to receive the prescribed training. At the end of the training you will undergo a departmental examination. Failure to pass the qualifying examination will involve your removal from the list of candidates.

3 Prescribed term of training is 3 months. Out of this period, training will be given to you at the Central Jail, Ambala, for a period of 2½ months, on expiry of which departmental examination will be held. Thereafter you will have to spend a period of 10 days at the Borstal institution and Juvenile Jail, Hissar, for Borstal training. On expiry of 10 days you will have to obtain a certificate from the Superintendent of that Institution to the effect that you have received the necessary training. If a candidate fails to qualify at the conclusion of training, he will be required to undergo a 2nd and final period of similar training.

4. No pay or allowance will be admissible during the period of training. Similarly no T.A. will be granted for journey undertaken to receive training.

5. On the completion of training, candidates will be eligible for appointment as and when required.

6. In case you do not now desire to be accepted as Assistant Superintendent candidate, a report to this effect should be sent to this office on or before the 20th August, 1949."

20. In para. 256 of the Manual the selected candidates were allowed to draw pay at the rate of Rs. 60 p.m. but according to para. 4 of this letter no pay or allowance was admissible during the period of training, similarly no T.A. was to be granted for journey undertaken to receive training. In para. 5 of this letter it was further explained to the candidates that on the completion of training, candidates will be eligible for an appointment as and when required. Ex. P. 4 is a letter from the Secretary, East Punjab Public Service Commission, Simla, to Shri Mani Ram, (Petitioner), and which was produced by him. This has a great bearing on the terms of the posts of Assistant Superintendent and is, therefore, reproduced below:—

Registered.

From

The Secretary, East Punjab, Public Service Commission, Simla.

To

Shri Mani Ram, Bishnoi, Badopal (Hissar).

No. B.F. 20/49-SAP/7446.

Dated, Simla, the 4th June, 1949.

SUBJECT:—*Recruitment to the posts of Asstt. Supdt. of Jail.*

Sir,

With reference to your application for the above-noted post I am directed to request you to attend for the purpose of interview with the East Punjab Public Service Commission at their office in Block No. 1, G.H.Q. Buildings, Simla, on Monday the 20th June, 1949, at 10 A.M.

2. The Public Service Commission do not defray travelling and other expenses of candidates summoned for interview.

3. Except where otherwise stated in the "information for candidates" relating to the post, the Public Service Commission cannot hold out any hopes for the grant of an initial pay higher than the minimum of the scale advertised.

4. I am to request you to bring the originals of your diplomas and testimonials with you, together with your Matriculation certificates if not already submitted to this Commission. If the original diplomas and testimonials are not available, copies thereof attested by a gazetted officer or a Magistrate under the seal of his court may be produced.

5. In particular I am to invite your attention to the memorandum of irregularities in your application noted on reverse, and to emphasize that unless the requirements are complied with immediately, your application is liable to be rejected.

6. With reference to paragraph 7 of the 'Information for Candidates' for the abovementioned posts (copy already supplied to you), I am to say that Government have now intimated that since candidates will be selected for appointment in the existing and future temporary vacancies, they will not be entitled to the grant of pay of Rs. 60 p.m. for the period of their training.

7. You have been allotted serial No. 78, which you should invariably quote in all correspondence with the Commission in connection with your candidature for the posts.

Yours faithfully,

(Sd.)

Secretary.

21. The learned counsel for respondents quoted the *Gazette of India Extraordinary* Part 2—Section 3 No. 74, dated 2nd April, 1953, at page 1015 in support of his contention as to how the term "office" is interpreted by our own parliament. The relevant paras. are 18 and 19. This is a case in which the President of the Union of India decided that certain members of the Legislative

Assembly of the State of Vindhya Pradesh have become disqualified by reason of their having accepted offices as members of certain District Advisory Councils appointed by the Lt. Governor of the said State. It may be mentioned here that in this case *vide* para. 8 the members were to get T.A. and D.A. applicable to the members of Legislative Assembly for the days of meetings. The last lines of para. 18 page 1023 would also show that the members of District Advisory Council certainly carry out public functions. It would thus appear that this reference has no bearing on the present case, as the petitioner was simply an accepted candidate with no functions to perform. The other ruling quoted by the learned counsel for the respondents is reported at page 315 in the *Gazette of India*, dated 5th February, 1953. This was a petition before the Election Tribunal, Patiala, and the point involved *vide* issue No. 4(a), was whether respondent No. (Hari Singh) was holding an office of profit under the State Government at the time of his nomination was made? At page 319 in para. 12 it appears that this respondent was already in the service of State Government as a teacher in the Mohinder Garh High School but to stand for the election he tendered his resignation on a few days before the last date for filing nomination papers and he ceased to attend to his duties from that date. At the time of acceptance of Hari Singh's nomination the position, therefore, was that though he had ceased to attend to his duties, his resignation not having been accepted, he was to be regarded as being still in service and so for purposes of election was under a disqualification as an holder of office of profit. It would thus be seen that this case has no analogy to the present case. The petitioner never held an office not to speak of "office of profit". The position put forward by the learned counsel for the petitioner was that Ch. Mani Ram, was only an applicant *vide* his application R.W. 1/2 on 26th April, 1949 and *vide* Ex. P. 4 a letter from the Secretary, East Punjab Public Service Commission, dated the 4th June, 1949. He was directed to appear for interview before the Public Service Commission, and *vide* letter No. 8799-GI, dated 9th August, 1949, from the Inspector General of Prisons, Punjab, Ambala, Ex. R.W. 1/1 he was informed that he was accepted as a candidate for employment as Assistant Superintendent Jail by the East Punjab Government and he was to take training. It was also made clear to him that on the completion of training, candidates will be eligible for appointment as and when required. He was further informed to join the training class *vide* Ex. P. 2 letter of the Inspector General of Prisons, Punjab, dated 7th September, 1949. In this letter it was made clear to the candidates that they were to make their own arrangements for residence during the period of their training as no accommodation would be provided at Jail premises or any where else at Government expenses and further referred that no T.A. will be granted for the journey undertaken to receive training. The learned counsel for the petitioner explained the status of these candidates after they had obtained training as recognised by the Jail Department, by referring to Ex. P. 2/1, a letter written to the Inspector General of Prisons, Punjab, Ambala, by one Hardip Singh Dhillon who was an Assistant Superintendent trainee of this batch and it refer to Ex. P. I which read as below:—

To

The Inspector-General, Prisons, East Punjab, Ambala.

Dear Sir,

I am an accepted candidate for appointment as Assistant Superintendent Jail and under training at the present time. Hope you will pay your kind attention to my brief questionnaire.

Shall we get employment immediately after we are successful at the end of our training period? Or how long shall we to wait for, and in the meantime, can we seek some other paying job? Because most of us being refugees cannot spare to sit idle for want of money. Even the withdrawal of sixty rupees monthly stipend added to our difficulty.

Moreover, can we apply to join the Territorial Army, serving Jail department at the same time, and for some other Government service at a subsequent time.

With humble submission,

Yours faithfully,

(Sd.) HARDIP SINGH DHILLON,

A. S. Trainee, Central Jail, Ambala.

The 27th October, 1949.

22. The reply to the above letter by the Inspector General of Prisons, Punjab, dated 2nd December, 1949, Ex. P. I, reads as below:—

From

MP-12824-GI.

The Inspector General of Prisons, East Punjab.

To

The Superintendent, Central Jail, Ambala.

AMBALA,

The 2nd December, 1949.

Reference your endorsement, No. 11927, dated the 27th October, 1949.

Please inform S. Hardeep Singh, Assistant Superintendent candidate, under training, as follows:—

1. His employment in this Department would depend on the number of vacancies at the time of employment and the position secured by him amongst successful candidates as a result of the examination.
2. There is no objection to his seeking some other paying job, provided he keeps this office informed of his address from time to time.
3. The question does not arise, as he is still under training and not in service in this Department.

(Sd.)

Superintendent,

for Inspector-General, Prisons, East Punjab.

23. It was argued by the learned counsel for the petitioner that in view of all these documents and the statements of P.W. I Shri Birbal Chaddha, Head Clerk, Central Jail, Ambala, P.W. 2, Shri Amrik Singh, P.A. to Inspector General of Prisons, at Ambala, and R.W. Shri Jinda Ram, office Superintendent of Inspector General of Prisons, it is abundantly clear that the status of the petitioner was nothing more than that of an accepted candidate at No. 12 on the waiting list waiting for his chance for employment which depend on the number of vacancies at the time of employment and the position secured by him amongst the successful candidates as a result of the examination as disclosed in Ex. P. I. Even the Government had no objection to the accepted candidates seeking some other paying job. The only condition was that he should inform the I. G. Prisons of his address from time to time. The last para. of Ex. P. I leaves no doubt on this point and the accepted candidate only enjoyed the status of a trainee and was not considered in service in the Jail Department.

24. The learned counsel for the petitioner further contended that in view of his arguments the nomination paper of Ch. Mani Ram the petitioner was improperly and illegally rejected by the order Ex. P. 8, of Shri G. S. Mann. He contended that the returning officer was under the wrong impression that the disqualifications of the petitioner fell under section 7(D) of the Representation of the People Act, 1951. The references quoted by him are stray lines which have no bearing on the circumstances of the present case.

25. The relevant section imposing disqualification in this case is 191 of the Constitution of India which reads as below:—

191 (I).—A person shall be disqualified for being chosen, as, and for being a member of the Legislative Assembly, or Legislative Council of a State—

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule.

From the above section it is quite clear that the intention of the law is that the person standing for election should not be in possession of an office of profit at the time of filing nomination papers. The under-lying principle of this provision is two fold: Firstly, the holding of an office of profit under the Government is not compatible with the membership of a Legislature. Secondly, if the holding of office of profit were permissible the independent of the members of legislature would be impaired and jeopardised so, in order to disqualify a man three things are essential: Firstly, there must be an office; Secondly, that office must be an office of profit; and thirdly, that must be under the Government of India or under the Government of State.

If any one of these essential ingredients is absent there can be no disqualification. As regards the meaning and the definition of the word 'office' CHAMBERS'S TWENTIETH CENTURY DICTIONARY gives the following relevant meaning:—

A service; a function or duty; settled duty or employment; a position imposing certain duties or giving a right to exercise an employment; position of a post in the Government; etc.

The word 'profit' as defined by the same dictionary means:—

Advantage; addition to good or value; benefit; improvement.

The word 'hold' as defined in this dictionary gives the following relevant meaning:—

To keep; to have; to grasp; to have in one's possession; keeping or power; to sustain; to defend successfully; to maintain; to assert authoritatively; to occupy; etc.

26. Now from the above definitions it is manifest that the petitioner was not in possession of any office as contemplated by the dictionary meaning, not to speak of an office of profit which in common parlance means an office which actually gives to the incumbent a profit in the shape of money payment. It may be termed a "salary", "emoluments" "Honorarium", "Pay", "Fee", or "a subsistence allowance or it may be any other pecuniary gain.

27. The learned counsel for the petitioner brought to our notice various decisions of the other election tribunals on this very point and a few of them are quoted in support of his contention:—

Before the Election Tribunal at Manglore in *K. Shivarama Karanth Petitioner Vs. K. Ven Katramana Gowada* and others reported at page 1951 of the *Gazette of India*, January, 23rd, 1953, the point was raised that the first respondent, being a member of the South Kanara Area Committee, constituted under the Madras Hindu Religious and Charitable Endowment Act, 1951. Exercising the power of Assistant Commissioner over minor temples holds an office of profit under the State Government and is consequently disqualified under Article 191 (1)(a) of the Constitution. At page 198 the relevant point is discussed in para 23 nevertheless "it is argued for the petitioner that the holding of the office of a member of an area committee is incompatible with membership of the legislature, as the office holder is subject to the Administrative Control of the Government (Ministers), and as he cannot freely exercise his judgment when matters relating to Hindu Religious and Charitable Endowments" are debated in the Legislature. Therefore, the office comes within the intendment of Article 191, and, "Profit" there does not necessarily mean pecuniary gain. Honour, prestige and like advantage suffice to constitute profit. But we are here concerned with the interpretation of a statute and not with the Public Policy under-lying it. We are both to place an interpretation which does not give the words "of profit" their due weight. If honour and prestige were sufficient to constitute profit then those words were unnecessary, for, any office under the Government must we conceive, carry in some measure those attributes. Pecuniary advantage, it would appear, is an essential element, although once there is, or there can be pecuniary gain, its quantum seems to be immaterial. If the extreme interpretation placed by the petitioner were to be accepted, any office under the Government, though strictly honorary, would be hit. The analogy of what would appear to be similar offices being disqualifying offices in England is of no avail; for, there it is to be remembered, the disqualification is mostly imposed in express terms by the statute constituting the office in question and not by the general disqualification contained under section 24 of the succession to the Crown Act 1707 (6 Ann.-C.41) which corresponds to Article 191 of the Constitution. We do not consider that the Constitution intended to impose a wholesale ban on every type of office irrespective of whether any remuneration is attached to it or not. We decline to place such a construction, as, we believe, that such an intention does not follow from a reading of the clause.

BEFORE THE ELECTION TRIBUNAL, JAIPURE

Pt. Harish Chandra Petitioner Vs. Raja Man Singh and others respondents reported in April, 24, 1953. A similar point about the interpretation of office of profit was involved in issue No. 4 in that case at page 1467 and was discussed as follows:—

"It was argued by the learned counsel for the petitioner that the contesting respondent held an office of profit within the meaning of Article 191 of the Constitution of India, as he got monthly allowance from the Government. The only thing that he has been able to show is that the

contesting respondent gets a monthly allowance and certain other easements on account of his being a member of the Raj family of Bharatpur. Reliance was placed on rule 241 of the Bharatpur State Civil Service Regulations, which were framed in the year 1934 during the minority administration of Bharatpur. It was contended by the learned counsel for the contesting respondent that they were not enforceable as it was only the ruler who could frame rules in respect of Khanpan etc. It was further argued that these rules, even if they had any force in Bharatpur State, ceased to have any affect after the merger of Bharatpur State first in the Matsya Union and thereafter in the present Rajasthan State. This is, however, a very controversial matter and we need not go into it in this case, as to our mind even if the rules be taken to have the force of law and to be enforceable even after the merger of Bharatpur State in the bigger State of Rajasthan, there is nothing in them which shows that the contesting respondent, who is getting allowance by way of maintenance and has got a bungalow to live in and some other easements, was a holder of office under the erstwhile State of Bharatpur or thereafter under the Matsya, Rajasthan or Indian Government. Reliance was placed on the wordings of rule 241 that it is a recognised principle that the State had a right to exact service from all Khanpanis and allowance-holders. It may be that the State had a right to exact service from all Khanpanies, but the question is whether until any such services were given, they would be deemed to be holding an office under the Government. The liability to exact service is different from conferment of office. Until the office is conferred, it cannot be said that the person who has the liability to serve holds an "office"—Office in the Law Lexicon of British India by P. Ramanatha Iyer, 1940 Edition, page 901, is defined as "that function by virtue whereof a man hath some employment in the affairs of another, as of the King, or of another person". Again it is said to be "the right to exercise a public or private employment, and take the fees and emoluments thereunto belonging, whether public, as those of magistrates, or private, as of bailiffs, receivers", etc. "Office" denotes a duty in the office-holder to be discharged by him as such. It consists in a right and corresponding duty, to execute a public or private duty and to take the emoluments belonging to it. In the Wharton's Law Lexicon, 13th Edition, page 608, "office" has been defined as "an ecclesiastical". Can it be said that the contesting respondent is holding any office, has the contesting respondent any function by virtue whereof he has some employment in the affairs of the State, or has he the right to exercise public or private employment? The reply to these is bound to be in the negative. We are, therefore, unable to hold that the contesting respondent held an office of profit under the Government of India or under the Government of Rajasthan at the time of filing his nomination paper. Of course, he gets a substantial allowance, and it may be said that he derives a profit from the Government, but mere getting allowance without holding any office does not disqualify a person to stand as a candidate for the Rajasthan Legislative Assembly, who is otherwise qualified to stand for it".

28. In the case of the petitioner he was just an accepted candidate holding no office of profit. So much so that even no allowances were paid to reimburse his actually out of pocket expenses incurred by him in obtaining training. I find that his position as an approved or accepted candidate did not carry any profit nor was it capable of yielding any profit. He had no functions what shown to perform in the capacity of an accepted candidate.

29. On the other hand it was pointed out that the petitioner accepted the post of Instructor, Home Defence *vide* letter dated 31st March 1950, of the Home Secretary to Government Punjab, marked Ex. P. 6, from this post his resignation was accepted *vide* letter Ex. P. 5 of the Officer Incharge, District Home Defence, Hissar, dated 16th July 1951, to the address of the petitioner. It would be noteworthy to point out here that the office of profit which is alleged to have been held by the petitioner under the Jail Department was only offered to him as late as on 9th August 1952, during the pendency of this petition *vide* I.G. of Prisoners' letter Ex. P. 3.

30. The learned Government Pleader on behalf of the Advocate General also argued this point, the gist of his arguments was that Ch. Mani Ram, the petitioner, was only an accepted candidate and nothing beyond that. He was simply awaiting his chance for an appointment in due course and being a candidate he had

no duties or functions to perform, he had no moral or legal obligation towards the Government. He further added that he could not be said to be holding an office of profit under the State Government by any stretch of imagination.

31. In view of the above discussion I decide this issue in favour of the petitioner and find that his nomination paper was illegally and improperly rejected by the Returning Officer and it materially affected the result of the election of this constituency which point I shall discuss later on.

32. *Issue No. 2(a).*—In view of my above finding it is not necessary to give decision on this issue.

33. *Issue No. 2(b).*—This issue was not pressed before us. However, there was conflicting evidence led that the petitioner raised an objection against Shri Chokha's nomination paper. Even if it be held as such, it will not debar the petitioner to raise this point as the law of estoppel does not come into play and is not recognised by Section 81 of the Representation of the People Act, 1951, under which any elector can call in question an election.

34. *Issue No. 2(c).*—There is no good evidence on this point too. Shri Chokha respondent was not produced. He was the proper person to say whether he was serious or not. He is living in Kala Matti in U.P., a neighbouring province and he could have been produced and was not beyond the reach of this tribunal. Hence, this issue is decided against the respondents.

35. *Issue No. 3.*—This issue was not touched in the arguments and hence, needs no finding.

Issue No. 4(a).—This issue was not pressed.

Issue No. 4(b).—This issue was also not pressed.

36. Having held the rejection of the nomination of Shri Mani Ram to be improper it is now to be seen whether the rejection has materially affected the result of the election. Section 100(1) of the Representation of the People Act, 1951, reads if the Tribunal is of the opinion—(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void. After giving thoughtful consideration to clause (c) of Section 100(1) of the Representation of the People Act, 1951, and a long string of Rulings by the various tribunals who had to deal with the interpretation of this section, right from the Rohtak case decided in 1921 by this time, I think this is settled law now that the initial presumption arises in favour of the petitioner that the result of the election has been materially affected and that the improper refusal was so grave and irregular that this presumption would require the strongest and most conclusive proof for its rebuttal and that it lies heavily on the respondent to rebut the presumption so raised.

37. On this point a great deal of evidence was produced by respondent No. 1. At the initial stage of evidence a futile attempt was made to show *vide* statements of the R.W. 2 and 3 that the Congress ticket was not allotted by the date i.e. 5th November 1951, on which the nomination papers were to be filed. When R.W. 3 was being cross-examined a copy of the Tribune dated 3rd November 1951 marked Ex. P.A., was produced by the learned counsel for the petitioner which revealed that the Congress ticket had been allotted to Ch. Mani Ram for remaining seat and to Shri Dalbir Singh for the reserved seat.

38. After that the trend of respondent's evidence showed that the Congress ticket was originally allotted to the petitioner but it was subsequently transferred to Ch. Ganga Ram respondent No. 1. The evidence on this point is of partisan character and conflicting and to determine this point I can safely rely upon the evidence of Hon'ble S. Partap Singh Kairon Minister for Development Punjab, R.W. 36 who was the President of the Punjab Pradesh Congress Committee when the last elections took place. Since he was at the helm of the Congress affair his statement is very important in this matter. He deposed that Ch. Mani Ram the petitioner and Ch. Ganga Ram respondent No. 1 were recommended by the District Congress Committee Hissar, for Fatehabad Constituency, the P.C.C., which had constituted a Central Election Board made its recommendation *vide* Ex. R.W. 36/2 and the names of Shri Ganga Ram and Shri Mani Ram were bracketted for this constituency *vide* Ex. R.W. 36/3. He further revealed that a committee was constituted of Shri Gulzari Lal Nanda, Mrs. Durga Bai (Now Mrs. Desh Mukh) and Shri Lal Bahadur Shastri and he was also on that committee and he got the name of Ch. Ganga Ram recommended by this committee to the Central Election Board who had to take up the matter in full session.

This recommendation of the committee aforesaid has however upset in the Central Parliamentary Board because the view of the Central Election Board was to bring in new blood and Ch. Mani Ram was admittedly new blood. The Congress ticket was thus given by the Central Board to Ch. Mani Ram. I entirely believe the evidence of Hon'ble S. Partap Singh Kairon on this point and it leaves no doubt in my mind that the congress chose Ch. Mani Ram as its nominee to file his nomination papers to contest this seat. My this conclusion is further confirmed by the telegram Ex. P. 7 addressed to Ch. Mani Ram, P.O. Badopal, Hissar, dated 3rd November 1951, produced by the petitioner which reads "ALL INDIA CONGRESS ELECTION BOARD NOMINATED YOU FOR FATEHABAD ASSEMBLY CONSTITUENCY FILE PAPERS AT ONCE DISTRICT HEADQUARTERS ALTERNATE PAPERS MUST BE GOOD. PUNJAB CONGRESS".

39. Thus at the time of filing nomination papers Ch. Mani Ram had the congress ticket for this seat and as such he gave his symbol two bulls with yoke on as his first preference. On the other hand Ch. Ganga Ram respondent No. 1 who failed to secure the congress ticket filed his nomination as an independent candidate and this is further proved on making a reference to his nomination papers where he has given his symbol "Camal" as first preference. "Railway engine" as 2nd Preference "Tree" as 3rd preference in all the nomination papers. It may also be mentioned here that he was not even asked nor did he file his papers as covering candidate to the Congress nominee which further goes to show that he had made up his mind to stand as an independent candidate for this seat.

40. However, when the name of Shri Mani Ram was eliminated as a result of the scrutiny by the Returning Officer the congress ticket was transferred to Ch. Ganga Ram respondent No. 1 and not before that.

41. To rebut the presumption in favour of the petitioner respondent No. 1 took up the stand of his extreme popularity in the said constituency and it was vehemently argued by the learned counsel for the respondent No. 1 that it was due to his extra popularity in the Ilqa that he was elected from this seat and not because he held the congress ticket. He referred to a mass of evidence produced by Respondent No. 1 to prove his popularity and witnesses no doubt deposed that since Ch. Ganga Ram was an Ex-Zaildar, member of the District Board for about 23 years, had been a senior Vice-Chairman of the District Board from 1946 to 1947 and had been also the President of the Sirsa Market Committee for a couple of years and therefore he wielded a great influence in the Ilqa. Some of them have further tried to show that they would have voted for him even if he had not held the congress ticket.

42. On the other hand attempt was made by some of the witnesses to show the non entity of Ch. Mani Ram but this attempt failed as some of the witnesses deposed that he also carried some influence in the Ilqa. R.W. 5 deposed that Mani Ram had good influence in Badopal and in near about villages. But in the rest of Ilqa Ch. Ganga Ram has a great influence. R.W. 2 deposed that Ch. Ganga Ram had big influence whereas Mani Ram had less influence.

43. The trend of the respondent's evidence was to prove that he did not gain anything by securing the congress ticket. So much so that Ch. Ganga Ram respondent No. 1 has R.W. 40 stated in his deposition that he had succeeded in the last election on account of his personal influence and not because of Congress ticket. Adding if Ch. Mani Ram had opposed then according to his estimate he would have gained a splendid victory over him. In the cross examination he stated that he neither gained nor lost in any way by getting the congress ticket in the last Assembly Elections. From the very start he had an idea that he would not in any way gain in securing votes by getting the congress tickets. But he had the desire to be with the Congress party as he believed in congress creed. This point was further developed by the learned counsel for the respondent No. 1 contending that Ch. Ganga Ram's desire was only to join the congress party which was in power. It was pointed out to him that this question did not arise as at that time it was Governor's rule in Punjab and the Congress party was not in power at the time of elections.

44. It is not understood that on one hand it is brought on the record that Ch. Ganga Ram's popularity was wholly and solely responsible for his success in the election and at the same time evidence was led to show his great keenness to secure the congress ticket. His Keenness to become the congress nominee can very well be gauged from the statement of Ch. Sahib Ram M.L.C., R.W. 28 who had been pursuing this matter at great pains. The statement of Hon'ble S. Partap Singh Kairon, R.W. 36, reveals that even after the rejection of his nomination by

the Central Board he was approached to get the matter reconsidered in favour of Ch. Ganga Ram. So much so that a representation by many Ex. M.L.A's. of Haryana Prant was made to him which is marked Ex. R.W.36/1. Similarly Hon'ble Shri Jagat Narain, Minister for Education, Punjab, who was the General Secretary of the Punjab Pradesh Congress Committee when the last elections took place, stated that lot of persons from this constituency approached him after the decision of the Central Parliamentary Board to get the congress ticket allotted to Ch. Ganga Ram. In his view Ch. Ganga Ram was the best candidate from this constituency and he talked to S. Partap Singh to see what could be done in this matter. This is a very weighty statement which proves the anxiety of Ch. Ganga Ram to obtain Congress ticket at that time although now he chose to spurn at it to suit his defence in the election petition and to show that it was his supreme popularity which got him the seat in the election and congress ticket was of no avail to him.

45. Pt. Ram Dayal Vaid R.W. 39, General Secretary, Provincial Congress Committee, who was the President of the District Congress Committee, Hissar, when the last elections took place, stated that he sent a letter to S. Partap Singh through Mahasha Hukam Chand, Secretary of Dabwali Thana, Congress Committee, on 6th November 1951 to help Ch. Ganga Ram in securing the congress ticket Mahash Hukam Chand brought the reply that Shri Partap Singh had promised to help and after the rejection of nomination papers he sent the telegram to the P.C.S. and to the A.I.C.C. informing them about the rejection of Ch. Mani Ram's papers and requested them to give the congress ticket to Ch. Ganga Ram, and Ch. Ganga Ram got the ticket.

46. All this important evidence, referred to above led by the respondent No. 1, leaves, no doubt in my mind that Ch. Ganga Ram never gave up his efforts to get the congress ticket and S. Partap Singh and Shri Jagat Narain were approached to use their good offices to get the congress ticket transferred to him even after it had been allotted to Ch. Mani Ram. This would show the high and true value of the congress ticket in those days and it can very well be judged in its true perspective when the result of last elections from Hissar District is borne in mind. Out of 10 seats, 9 seats were captured by the Congress nominees. But for the congress ticket and the congress label Ch. Ganga Ram would have never succeeded.

47. According to his own statement 35,000 to 36,000 were the Jats voters in this constituency, and according to his estimation about 15,000 Jats came to the polls and he got 8,000 to 9,000 votes of Jats. He further admits that Refugees voted to the extent of 90 per cent. for him, Bishnois voted to the extent of 25 per cent. and Harijans voted for him in vast majority. The approximate number of voters in this constituency as given out by R.W. 34 Shri Dalbir Singh respondent No. 2 is about 1,10,000 (according to Ch. Mani Ram P.W. 3 the number is 1,05,000) and Jats voters were said to be 30,000, and Harijan voters according to him about 26,000. His estimate of Bishnoi voters was about 8 or 9 thousand whereas Ch. Mani Ram R.W. 3 fixed this figure at 12 thousand in the last election. Ch. Ganga Ram was opposed by other 4 jats and one of them was Pat Ram his nephew who secured 3,084 votes. Shri Het Ram Jat got 1,599. Shri Ramji Lal Jat of the Zamindari Party secured 11,069 and Shri Mani Ram Jat secured 7,521.

48. Incidentally it may be pointed out that he was not so popular in his own brother-hood as given out. Ch. Ganga Ram, secured 14,516 votes; if according to him he got 8 or 9 thousand votes it would leave a margin of 5 or 6 thousand votes out of his total. That means that this 500 or 600 were contributed by Harijans, refugees, Bishnois and all others. It is in evidence that Harijan voted en-block for the congress. It is also in evidence that refugees were out to support the congress candidates. It is also in evidence that the prospects of the Congress candidates got a fillip. From the visits of Hon'ble Pandit Jawahar Lal Nehru and other Congress leaders such as Hon'ble Dr. Parmar, Chief Minister, Himachal Pradesh, Hon'ble Dr. Padam Dev, Minister of Himachal Pradesh, to this Ilaga. It is also on the record that congress workers canvassed for the respondent No. 1 and 2.

49. According to the statement of R.W. 8, Ram Partap Bishnoi, S. Partap Singh Kairon (now Hon'ble Minister) had published a poster in those days appealing to the voters to vote for Ch. Ganga Ram who had a "Camel" symbol, because he had been given Congress ticket. Besides this. Fatehabad constituency consisted of 22 Zails which was formerly a part of the constituency from which Shri Sahib Ram, R.W. 28 had been returned twice as a congress nominee in 1937 and 1946 as per his own statement. Thus it was a strong hold of Congress.

50. According to R.W. 14, Ganga Ram, being on the congress ticket, however, made a great effect in enabling him to succeed at the polls. Ch. Sahib Ram R.W. 28, brother-in-law of Ch. Ganga Ram, admitted, that Ch. Ganga Ram respondent gained in securing votes by the fact that he had got the congress ticket. Shri D. D. Kapila, D.C. R.W. 41, Deputy Commissioner, Hissar, deposed that he was D. C. Hissar since July, 1951, and Ch. Ganga Ram, is considered to be an influential man in his Ilaga but in the end he added that in his opinion no body could win without the congress ticket in the last elections. R.W. 41, was the last though not the least important witness and his weighty statement was the last straw which broke the camel's back and incidentally that happened to be the "symbol" of respondent No. 1 in this case. It also exploded the theory of the most extraordinary popularity of the respondent No. 1 as compared to the potential value of the congress ticket.

51. In the light of the above facts it would show that Ch. Ganga Ram, could not have secured 8 to 9 thousand votes of Jats as there were 4 other Jat candidates who were pitched against him to share the Jat votes. Leaving aside the margin of the Jat votes it is apparent that the other votes were polled in favour of Ch. Ganga Ram, mostly on account of his being a congress nominee and not rely on account of his popularity. If the nomination paper of Ch. Mani Ram, who was the original congress candidate had not been rejected the result of the election would have been different and improper rejection of the nomination paper of Ch. Mani Ram, deprived the electorate to exercise its right of vote in his favour.

52. To discredit Ch. Mani Ram one or two incidents of his quarrelsome nature were magnified and exploited to show that he could not have been popular with the electorate. I need not go into the details and just dismiss these arguments by pointing out that one of the incidents relates to September-October, 1952, and has nothing to do with his popularity in 1951 when the elections were held. The evidence on the record revealed that he was recommended throughout from the District right upto the High Command and inspite of the luke-warm support of the Punjab Pradesh Congress Committee he was selected by the high ups on the ground of his being a graduate and of new blood against Ch. Ganga Ram who is aged 63 years and educated upto the Primary standard.

53. As regards his influence, respondent No. 1's witnesses stated that he wielded less influence than Ch. Ganga Ram as per deposition of R.W. 2 but R.W. 16 stated that he had pretty good influence. According to Shri D. D. Kapila, Deputy Commissioner, Hissar, he summed up his character in the following words, "personally, I believe Ch. Mani Ram to be a gentleman and nothing else".

The esteem in which he was held by the Hon'ble S. Partap Singh Kairon, Minister for Development, can be judged from his D.O. Ex. P. 13, dated 28th July, 1952, in which he addressed the petitioner as "Ch. Mani Ram, B.A., Congress Leader, Village P.O. Badopal, District Hissar".

54. Admittedly, his personal influence was less as compared to the respondent No. 1 but this fact cannot be ignored that the whole might of the Congress organisation was behind him at the time of his nomination and in the remarkable words of Shri D. D. Kapila, Deputy Commissioner, Hissar, "Nobody could win without the Congress ticket in this Ilaga in the last elections" amply justify the chance of his success of which he was deprived by the rejection of his nomination paper.

55. In view of all these facts I am not convinced that the presumption has been rebutted to such an extent that an irresistible inference can be drawn that the result of the election would not have been materially affected on account of the improper and illegal rejection of the nomination paper of the petitioner.

56. I need not discuss elaborately the legal aspects any further as there is uniformity in the decisions of the Election Tribunals and they rightly point out that if on finding that a nomination is improperly rejected, it is to follow invariably that the result of the election has been materially affected. In this case too as mentioned above it has not been possible for the respondents to rebut this presumption. Their attempts have landed us in the realm of speculation, as no body can say with certainty what would have been the result, if the petitioner whose nomination was improperly rejected was permitted to contest the election.

A few recent decisions in the election cases would suffice to lend support of this view.

1. Before the Election Tribunal at Lucknow, Election Petition 208 of 1952 at page 1029 published in the *Gazette of India Extraordinary*, December 20, 1952.
2. Before the Election Tribunal Patna, Election Petition No. 86 of 1952 at page 2527 published in the *Gazette of India Extraordinary*, December 5, 1952.
3. Before the Election Tribunal, Delhi, Election Petition No. 2 of 1952 at page 2451, published in the *Gazette of India Extraordinary*, November 19, 1952.
4. Before the Election Tribunal, West Bengal, Election Petition No. 78 of 1952, at page 2519 published in the *Gazette of India Extraordinary*, December 4, 1952.
5. Before the Election Tribunal, Gwalior, Madhya Bharat, Election Petition No. 220 of 1952, at page 1553, published in the *Gazette of India Extraordinary*, May 5, 1953.
6. Before the Election Tribunal, Sikanderabad, Deccan, Election Petition No. 1 of 1952, at page 45 published in the *Gazette of India Extraordinary*, January 8, 1953.

In the end the learned counsel for respondent No. 2 Shri Dalbir Sir (Harijan) argued pathetically that improper rejection of Ch. Mani Ram rela to the remaining seat and it should not affect his client, whose seat is separate and a reserved one for the Scheduled Caste only. I am afraid unfortunately the law is such that in the Double-member constituency it hits both the candidates, as it is one indivisible election.

57. A reference to Section 63 of the R.P. Act is invited is as follows:—

Method of voting.—(1) in plural member constituencies other than Council constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate.

- (2) If an elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1), then, at the time of counting of votes not more than one of the votes given by him to such candidate shall be taken into account and all the other votes given by him to such candidate shall be rejected as void. From the wording of this section it is quite manifest that voters in a two-seated constituency are allowed two votes each with an option of casting these votes for any one of the candidates irrespective of the fact whether he does or does not belong to the scheduled caste, the only condition binding is that not more than one vote can be cast in favour of one candidate. It is thus possible for each voter to use his both votes for any two candidates of the same category, general or scheduled caste. As such we cannot exclude the possibility that the voters who have given one vote to respondent No. 2 might have given their votes to Shri Mani Ram if he had been in the contest, which would have affected the votes polled by Respondent No. 2 and he may not have been returned.

58. Further, u/s 55 of the R.P. Act, members of the scheduled castes are eligible to hold seats not reserved for them. In a two seated constituency when two of the candidates of the scheduled castes top the polls they carry away both the seats. Thus it could be seen that the election to the remaining and to the reserved seat are not to separate elections but it is one election, which is intermingled and cannot be severed and it is one indivisible election in which the candidates of the scheduled caste are also contesting for the election to the remaining seat. I am, therefore, of the opinion that the word "wholly void" used in Section 100(1) of the R.P. Act applies to the election of both the seats in the constituency.

59. I may refer to a few instances in support of this view.

- (1) Before the Election Tribunal, Gwalior, Madhya Bharat, Election Petition No. 221 at page 1553, quoted already.
- (2) Before the Election Tribunal, Delhi, Shri Suraj Bhan Vs. Shri Hem Chand, Election Petition No. 3 of 1952 at page 2443 published in the *Gazette of India Extraordinary*, November, 19, 1952.
- (3) Before the Election Tribunal, Jabbalpur, Election Petition No. 4 of 1952, at page 609 published in the *Gazette of India Extraordinary*, February 24, 1953.

60. No doubt, it is hard on the respondent No. 2 who has been declared elected to the reserved seat, as he has to suffer for no fault of his, but the law is such that there can be no help. No ruling to the contrary has been placed before us and it is up to the Legislature to amend the law in this respect to afford protection to the innocent candidate in this matter and to make him immune in the event of avoiding the election in the two seated constituency.

61. It is accordingly held that the result of the election has been materially affected by the illegal and improper rejection of the nomination paper of the petitioner Ch. Mani Ram, without any justification.

62. The Election petition, therefore, succeeds and is allowed and we declare the election to Punjab Legislative Assembly from the double member constituency of the Fatehabad to be wholly void under Section 100(1)(c) of the Representation of the People Act, 1951.

63. As this was the result of an erroneous decision given by the Returning Officer on the objection raised by Ch. Ramji Lal respondent and on Ch. Ganga Ram the proper order in such a case would be to direct the parties to bear their own costs and I, therefore, order accordingly.

The Government Pleader will however be paid Rs. 100 as his fee by Ch. Ganga Ram respondent No. 1.

ANNOUNCED

HISSAR;

The 25th July, 1953.

(Sd.) GURBAKHSI SINGH GYANI, *Member.*

I agree with the findings and order proposed by my learned brother.

(Sd.) MAHARAJ KISHORE, *Chairman.*

HISSAR;

The 25th July, 1953.

So do I.

(Sd.) T. C. SETHI, *Member.*

The 25th July, 1953.

[No. 19/96/52-Elec.III/401.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

